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November 17, 2004

FILED ELECTRONICALLY

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-B204
Washington, DC 20554

CG Docket No. 02-278

**Re: Venetian Casino Resort, LLC's Comments in Support of American
Teleservices Association's Petition for Declaratory Ruling**

Dear Ms. Dortch:

The Venetian Casino Resort, LLC ("Venetian") respectfully submits these comments in support of the American Teleservices Association's ("ATA") Petition for a Declaratory Ruling to preempt certain provisions of the New Jersey Consumer Fraud Act ("New Jersey Act")¹ and New Jersey Administrative Code ("New Jersey Rules")² relating to telemarketing, as these provisions are significantly more restrictive than the Commission's Rules and Regulations implementing the Telephone Consumer Protection Act ("TCPA") of 1991 ("Commission Rules").³

1. Statement of Interest

The Venetian is a world class luxury resort, casino and convention center headquartered in Las Vegas, Nevada. It features The Grand Canal Shoppes, the Canyon Ranch SpaClub, an expansive casino, 17 fine dining restaurants, the Guggenheim-Hermitage museum, and extensive convention and corporate services. The Venetian is a recipient of the Exxon/Mobile Four Star Award, AAA's Four Diamond Award, and the Five Star-Diamond Award by the American Academy of Hospitality Sciences. Additionally, the resort has been honored as one of the top 100 hotels in North America by Travel & Leisure Magazine, and has been noted as one of the top five catering departments in the world by Meetings and Conventions Magazine.

¹ N.J. STAT. ANN. § 56:8-119, et seq. (West 2003).

² N.J. ADMIN. CODE tit. 13, § 45D (2004).

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act* (TCPA) of 1991, 68 Fed. Reg. 44,144, 44,174 (July 25, 2003) (to be codified at 47 C.F.R. pt. 64, 68).

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The Venetian utilizes a variety of direct and indirect marketing methods to continuously attract guests to the resort. The former typically involve the initiation of targeted telephone and direct mail solicitations to guests who previously stayed with us.

The Venetian's compliance team ensures that all of the company's marketing efforts are compliant with applicable laws and regulations. The team is comprised of in-house compliance and quality assurance personnel. Additionally, the Venetian utilizes in-house and outside legal counsel to provide compliance-related direction, instruction, guidance and policies to the Venetian's compliance team.

The compliance team expends a significant amount of effort and resources to ensure that the company's marketing programs are within the regulatory framework of those states which have heeded the Commission's direction by implementing restrictions on interstate telemarketing which are consistent with, and not more restrictive than, the Commission Rules. The team is forced to expend even more resources on navigating the Venetian through the minefield created by states, such as New Jersey, which have unambiguously ignored the Commission's request not to implement rules and regulations affecting interstate telemarketing which are more restrictive than the Commission Rules. These states' attempts to implement and enforce more restrictive regulations on interstate telephone calls impede the Venetian's effort to contact its previous guests and significantly increase its compliance costs.

2. The New Jersey Act and the New Jersey Rules

The New Jersey Act and the New Jersey Rules directly conflict with, and are more restrictive than, the Commission Rules. They impose compliance burdens upon the Venetian which go substantially above and beyond those imposed by the Commission Rules.⁴

The Commission acknowledged the importance of supporting Congress' objective of creating uniform national rules:

Although section 227(e) gives states authority to impose more restrictive intrastate regulations, we believe that it was the clear intent of Congress generally to promote a uniform regulatory scheme under which telemarketers would not be subject to

⁴ The Commission Rules authorize states to promulgate and enforce regulations that are more restrictive than those established by the Commission, but only with respect to intrastate telemarketing. 68 Fed. Reg. at 44,155.

multiple, conflicting regulations. We conclude that inconsistent interstate rules frustrate the federal objective of creating uniform national rules, to avoid burdensome compliance costs for telemarketers and potential consumer confusion. The record in this proceeding supports the finding that application of inconsistent rules for those that telemarket on a nationwide or multi-state basis creates a substantial compliance burden for those entities.

We therefore believe that any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted.⁵

3. The New Jersey Rules Do Not Exempt Calls To Guests Who Previously Lodged At The Venetian Within Eighteen (18) Months Of The Date Of The Telemarketing Call From Its Do-Not-Call Restrictions.

Although the Venetian is concerned with the same three provisions of the New Jersey Act and/or New Jersey Rules which are the subject of ATA's petition, The Venetian is especially concerned about the New Jersey Rules' failure to provide for an established business relationship exemption to its do-not-call rule.

The Venetian maintains a significant annual marketing budget which utilizes telemarketing to contact persons who recently either lodged or gambled at the resort. The Venetian systematically directs at least some of these efforts to New Jersey residents. Our marketing research indicates that previous guests are extremely likely to return to the resort – in fact, many of our most frequent guests expect the Venetian to contact them with special packages, discounted resort rates and other promotional offers.

The Commission Rules expressly authorize the Venetian to initiate a telemarketing call to a subscriber whose telephone number is on the national do-not-call registry ("Registry"), provided the subscriber lodged or gambled at the Venetian within eighteen (18) months immediately preceding the date of the call.⁶ By adopting this exemption, the Commission

⁵ 68 Fed. Reg. at 44,155.

⁶ 47 C.F.R. § 64.1200(f)(3) (2003).

recognized that important aspects of the Venetian's business plans are based upon contacting our previous guests.⁷ Moreover, the Commission recognized that our previous guests may expect calls from the Venetian.⁸

The New Jersey Rules, on the other hand, provide a significantly narrower and more restrictive transaction-based exemption: The Venetian may initiate telephone solicitations to numbers on the Registry only if the Venetian *currently* transacts business with the subscriber.⁹ The New Jersey Rules preclude the Venetian from calling New Jersey residents who completed a visit to the Venetian within eighteen (18) months of the date of the call.

4. The New Jersey Rules Do Not Exempt Calls To Residents Who Inquired Into the Venetian's Services Within Ninety (90) Days of the Date of the Inquiry From its Do-Not-Call Restrictions

Many of the Venetian's guests interact with their assigned "casino hosts." These guests have typically achieved high levels of personal wealth and are some of the Venetian's best customers. The casino hosts typically serve as the guests' personal concierge; these guests often call their casino host to arrange all of the details of a future visit to the resort. If the casino hosts are unavailable at the time of the telephone call, the guests leave a message which requests the casino host to return their call. It is reasonable to assume that all guests who leave these messages expect to receive a return telephone call.

The Commission Rules expressly authorize the Venetian to return the telephone call of such a guest, even if his or her telephone number is on the Registry, within ninety (90) days of the date of the guest's telephone call.

The New Jersey Rules, on the other hand, contain no such exemption – The Venetian's casino hosts are legally precluded from calling a New Jersey resident who affirmatively

⁷ 68 Fed. Reg. at 44, 147.

⁸ 68 Fed. Reg. at 44, 158.

⁹ The Venetian would have no reason to initiate a telephone solicitation to a New Jersey resident who is currently a guest at the Venetian. Furthermore, since the Venetian's transaction with its guest is completed upon the customer's departure from the resort, the Venetian is precluded from contacting a previous guest after he or she returns to New Jersey to present them with special packages, discounted rates, etc. if his or her telephone number is on the Registry.

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requested a return telephone call from his or her casino host if the telephone number is on the Registry. Annoyed at the casino host's failure to return the telephone call, this guest may seek to establish a relationship with another property. Such an outcome would have a severely detrimental effect on the Venetian, as returning these telephone calls to New Jersey residents not only makes good business, but the guests expect to receive these calls.

4. Conclusion

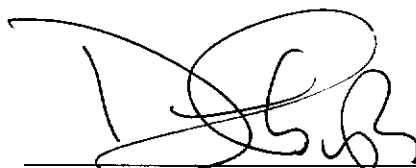
The enactment and enforcement of the New Jersey Rules have a clear negative impact on the Venetian's business and certainly were not the intent of Congress or the Commission when the TCPA and the Commission Rules were promulgated. They harm New Jersey subscribers who were previous guests of the Venetian by precluding them from being able to take advantage of the Venetian's promotional packages, and disrupt the Venetian's business and marketing processes while simultaneously increasing its compliance costs. The New Jersey Rules contravene the clear intent of Congress to create uniform national rules, and to ensure that individual privacy rights and public safety interests are balanced with the Venetian's legitimate interests which the Commission and Congress sought to preserve.

For the reasons cited herein, Venetian supports ATA's petition, and urges the Commission to preempt those provisions of New Jersey's Rules which are more restrictive than the Commission Rules.

Respectfully submitted,

VENETIAN CASINO RESORT, LLC

By:

A handwritten signature in black ink, appearing to read 'D. Forbush', written over a horizontal line.

Deanna Forbush, Associate General Counsel